# SPEEDY TRIAL ACT PLAN SOUTHERN DISTRICT OF IOWA



**SEPTEMBER 28, 2007** 

### I. <u>Intent and Expectations of the Court</u>

All criminal cases should be managed and monitored to insure a just, speedy disposition in compliance with the Sixth Amendment to the United States Constitution and federal laws referred to in this Plan. In the achievement of this goal, the Court has certain expectations. Among them are:

- 1. All participants in the criminal justice process, the Court, Court staff, the U.S. Probation Office, the U.S. Marshals Service, the U.S. Attorney and defense counsel shall, within the duties of their office, act to promote the just, speedy disposition of criminal cases.
- 2. Cases shall be scheduled for trial within the speedy trial period and reasonable discovery, motion, and pleading deadlines set at the time of arraignment, or as soon thereafter as practicable.
- 3. Except in complex cases, trial should ordinarily occur within 120 calendar days from arraignment.
- 4. Counsel shall comply with all Local Criminal Rules and, to the extent applicable, other Local Rules pertaining to motion practice and discovery with particular attention to meeting motion deadlines, timely responding to motions, complying with the requirement that counsel confer personally in an effort to resolve or narrow discovery disputes before filing a discovery-related motion, and in any motion for continuance stating whether continuance has been granted before and, if so, on how many occasions.
- 5. Counsel shall comply with the deadlines set in the Local Criminal Rules pertaining to the delivery of subpoenas and writs of habeas corpus ad testificandum to the U.S. Marshals Service, and for court approval of requests for subpoenas and writs.
- 6. Whenever possible, the government shall have complete discovery files assembled and ready for inspection by the time of arraignment, and defense counsel shall promptly make arrangements to review the government's discovery materials and timely comply with all applicable reciprocal discovery obligations. The Court encourages the maximum use of "open file" discovery and stipulated discovery orders to minimize discovery disputes.

- 7. The probation office shall continue to make every reasonable effort to reduce the time between verdict or plea and completion of the presentence report.
- 8. The Court will remain open to procedures and innovations to manage its criminal caseload as the caseload changes over time, including regular review of the status of criminal cases and pretrial conferences.

# II. Statement of Time Limits and Statutory Compliance

In compliance with the Sixth Amendment to the U. S. Constitution; the Speedy Trial Act (18 U.S.C. § 3161 *et seq.*); the Federal Juvenile Delinquency Act (18 U.S.C. § 5031 *et seq.*); the Interstate Agreement on Detainers Act (18 U.S.C. App. 2 § 1 *et seq.*); Federal Rules of Criminal Procedure 5, 32, and 50; and any applicable local administrative orders, the judges of the United States District Court for the Southern District of Iowa have adopted time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and juvenile proceedings.

Pursuant to the requirements of these statutes and rules, at the time of arraignment or as soon after arraignment as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. The court shall have sole responsibility for setting cases for trial after consultation with counsel. In addition, all pretrial hearings shall be conducted as soon after arraignment as possible, consistent with the priorities of other matters on the court's criminal docket. Likewise, the court shall schedule cases for sentencing at the earliest practicable time upon completion of the presentence report, subject to reasonable notice to the parties and sufficient opportunity to file objections pursuant to the local rules, administrative order, and federal rules of criminal procedure.

# III. Summary of Experience Under the Act Within the District

This section briefly summarizes the District's experiences under the Act since the adoption of its most recent Plan in 1980.

The District has not experienced significant difficulties under the Speedy Trial Act. Generally speaking, the provisions of the Act--and related legal requirements--are well understood by all of the relevant actors in the criminal justice system, and cases are brought to trial within the established time limits.

There have, of course, been significant changes affecting the District's Speedy Trial Plan over the past 27 years. These changes fall into two broad categories--legal changes and increases in overall criminal caseloads. The Court believes that these changes are being adequately addressed through the procedures and mechanisms described elsewhere in this Plan.

#### A. Legal Changes

First, there have been significant statutory changes in other areas of the law, which affected the District's 1980 Plan. For example, after enactment of the Sentencing Reform Act of 1984, it was no longer possible to expect criminal defendants to be sentenced within 30 days. Additional time is now necessary to prepare a presentence report, allow the parties to present objections to the probation office, and to allow disclosure of the final presentence report within the time periods established by Fed. R. Crim. P. 32. And as part of that process, more modern restitution statutes require the probation office to gather victim impact information directly from crime victims. *See*, *e.g.*, 18 U.S.C. § 3664(d)(2). As explained in the preceding section, the Court has

addressed the time for sentencing in its local rules and through a standing administrative order.

Relatedly, in many cases involving cooperating defendants, time is needed to determine whether the cooperation will result in a motion for substantial assistance under 18 U.S.C. § 3553(e) and/or USSG § 5K1.1. It is noted that the 2002 amendments to Fed. R. Crim. P. 35(b), which now allows a post-sentencing motion to be filed when a defendant's information was not useful to the government until more than a year after sentencing, has helped prevent delay in sentencings. Previously, there had been some delays in imposing sentence on defendants who had cooperated, but where the information had not yet been used.

It is also noted that those aspects of the District's 1980 Plan relating to "high risk" defendants who are not in custody are now largely irrelevant; this tracks 18 U.S.C. § 3164(a)(1). The enactment of the Bail Reform Act in 1984, 18 U.S.C. § 3141, *et seq.*, has essentially removed the possibility of a "high risk" defendant from being granted bond, which had been at least a theoretical possibility under prior law.

More recently, the Justice for All Act has codified the responsibility of both the Court and the U.S. Attorney's Office to provide crime victims with reasonable notice of court proceedings, and also "the right to proceedings free from unreasonable delay." *See* 18 U.S.C. § 3771(a)(2) and (a)(7). These requirements are generally consistent with the requirements of the Speedy Trial Act and are being appropriately addressed by the various actors within the Criminal Justice System charged with ensuring these rights, including the Court, the U.S. Probation Office, and the U.S. Attorney's Office.

These legal changes have been taken into account in the District's current plan, and also are addressed within the Court's Local Rules and standing administrative orders.

#### B. Increased Caseloads

Second, the District has experienced significant growth in the number of criminal filings (while, at the same time, also experiencing some increase in civil filings).

The District's 1980 Plan reported 122 criminal dispositions, and 179 new criminal filings, during the calendar year 1979. By way of contrast, during the calendar year 2006 a total of 369 criminal indictments were filed, with a total of 459 criminal defendants. The trend during the current calendar year suggests that these figures will be exceeded by approximately 20% in 2007. The character of the criminal filings has changed, as well, with notable increase in the proportion of drug, weapons, and immigration offenses within the District, as well as a marked increase in multi-defendant filings (typically involving conspiracy charges, often, but not exclusively, involving drug conspiracies charged under 21 U.S.C. § 846).

As reported in its 1980 Plan, the District had 588 new civil filings in 1978, and 851 new civil filings in 1979. For the two most recent fiscal years, these numbers were 966 (for 2005) and 846 (for 2006).

This growth has been accompanied by an increase in resources, which, by and large, has seemed to permit the District to work within the confines of the Speedy Trial Act. For example, the District has seen an increase in the number of authorized District Judges (currently 3) and Magistrate Judges (also currently 3), with appropriate increase in the Court's own staff, and also in related entities (e.g., probation office, marshals

service). The number of full-time Assistant U.S. Attorneys has likewise increased, and the U.S. Attorney also has several full-time and part-time Special Assistant United States Attorneys (SAUSAs); these SAUSAs are typically state prosecutors assigned to handle certain categories of gun and drug offenses. Additionally, a Federal Defender was appointed for the District in 1993, and the office has seen appropriate increase in staff to meet the needs of the District; this increase in staff, together with a well-qualified CJA panel, appears to the Court as sufficient to provide appropriate criminal defense services across the District to serve the needs of defendants under the Speedy Trial Act.

As the caseload has increased, the Court and the U.S. Attorney's Office have assigned full-time staff to service the District's Davenport Division, which accounts for appropriately 30% of the District's criminal filings. In fact, the Davenport Division has both a District Judge and a full-time Magistrate Judge in residence. Also, the Court has increased the number of grand juries sitting within the District, to include two in the headquarters location in Des Moines; one in Davenport (first convened in June 1998); and, effective September 2007, one in Council Bluffs, to serve the Western Division of the District, where the Court maintains courtroom facilities staffed by one part-time clerk's office employee. Because of the frequency of grand jury sessions across the District, there is rarely, if ever, any realistic concern of a grand jury not sitting within any 30 day period, as discussed in the District's 1980 Plan. See 18 U.S.C. § 3161(b).

It is noted that the District's median time from filing to disposition for fiscal year 2006 was 11.5 months from criminal cases, which represented a significant increase from the prior years (ranging from 7.1 months to 8.6 months during 2001-05). The Court

believes that this is a one-year anomaly, resulting from several diverse factors, and is confident that the innovations and other procedures discussed within this Plan will appropriately address this concern. As a more general point, and with the exception of fiscal year 2006, the average median times for disposition appear acceptable when compared with national and Eighth Circuit averages.

With the increase in personnel, together with appropriate adjustments to local rules of procedure, the District has been able to adequately address the requirements of the Speedy Trial Act, despite the large growth in criminal caseloads, and notwithstanding other changes to the legal framework, which indirectly affect practice under the Speedy Trial Act.

#### IV. Procedures and Innovations

Though the Southern District of Iowa is not currently having difficulty complying with the time limits contained in the Speedy Trial Act, we have implemented the practices listed below as part of our ongoing work to improve case processing procedures.

#### A. <u>Case Assignments</u>

Historically, criminal cases have remained unassigned until trial is imminent, with pretrial matters being handled on a rotational basis by a Magistrate Judge or District Judge, as appropriate. Cases were assigned to a specific District or Senior Judge within one to two weeks of trial. While this central calendar system has served us well, the increasing volume of criminal cases has prompted us to begin using, as of September 1, 2007, the individual calendar system used by most courts, which provides for random assignment of a District or Senior Judge at filing. The Court believes that this will cause increased scrutiny of continuances and case progress in general, and will result in more speedy resolutions. It also should eliminate the possibility of any case languishing unnoticed for any length of time, as might happen if a case were unassigned and not receiving routine review by chambers or court staff.

## B. <u>Magistrate Judge Procedures</u>

Our Magistrate Judges routinely incorporate into their arraignment procedures two practices that help to assure our compliance with the Speedy Trial Act. First, they set a Discovery Schedule pursuant to Local Criminal Rule 12.1, which is written in compliance with the Federal Rules of Criminal Procedure, and is intended to keep the

case moving forward constantly. Second, they set a trial date within the 70 day deadline set in the Act, so that even if no excludable time is accumulated, the case will be tried within allowable time frames. Care is taken at every stage to monitor excludable time given per 28 U.S.C. § 3161(h), so that even as motions and other matters extend the calendar time that a case remains pending, we are always in compliance with the Act.

#### C. <u>Final Pretrial Conferences</u>

In the past, last minute changes to the trial schedule caused the loss of a great deal of court time in the Davenport Division, as judges would travel there expecting a full schedule and end up with no trials at all. To alleviate this problem, in approximately January 1999 our resident Magistrate Judge in Davenport began holding final pretrial conferences approximately two weeks before a group of cases' scheduled trial date. This increased judicial involvement had the desired effect of providing a more predictable trial schedule by forcing attention to cases earlier.

Recently, an examination of the criminal caseload spurred creation of a related final pretrial conference system in the Central Division (Des Moines), the goals of which are to decrease our time from filing to disposition, and to act as a safety net in assuring that no pending case is left hanging without court attention and resolution. In July 2007 we began monthly criminal meetings involving a Magistrate Judge, the Clerk of Court, the Federal Public Defender, and the Criminal Division Chief of the U. S. Attorney's Office. Older pending cases are scrutinized at the meetings, and the necessary action to move a case forward is taken – ranging from a phone call to the setting of a final pretrial conference before a judge the following month. Initial results appear promising, but we

will monitor this system to assure that every case receives a just and efficient resolution.

# V. Additional Resources Needed to Achieve Compliance with the Act

For the most part, the requirements of the Act are, and have for many years been, being met by the staff provided in the normal course of funding for the various court agencies that have roles in administering the Act. Over the years, normally occurring increases in staffing have been adequate to allow and to continue effective compliance with all requirements of the Act.

# VI. Recommendations for Changes in Statutes, Rules, or Administrative Procedures

The Southern District of Iowa believes that the existing guidance that exists in the statutes, rules, procedures, and case law, provide a thorough examination of the Act, so that no further additions or changes are needed.

#### VII. Statistical Summary

In the years since the 1980 Plan was written, the district's caseload has risen dramatically in the criminal area and, following a national trend, has declined in recent years in the civil area. Attachments to our 1980 Plan note that in 1979 there were 122 criminal cases disposed of, a count that has risen 273%, to 456, in 2007. On the civil side, in 1978 and 1979 there were 18.4% and 11.4% rises, respectively, in the pending civil caseload, and an almost 45% jump, from 588 to 851, in civil cases filed. Viewing Table 3. below, our pending civil caseload shows declines of 9% and 11% for 2006 and 2007, and of almost 4% for civil cases filed.

In intervening years, when our civil caseload was higher, civil case processing times rose somewhat for short periods, but overall we were able to remain remarkably consistent. Federal Court Management Statistics from 1992 to 2006 show a range from 10 to 14 months for our median filing to disposition time, with a current ranking of 59 for all federal districts. Our median time from filing to trial ranged from 19 to 26 months, with our current 10.4 months ranking us 37 for all federal districts. In spite of the tremendous increase in criminal case work, we have been able to comply with both the requirements and spirit of the Speedy Trial Act.

Table 1. Criminal Case Processing – Average Days Between Events

	2007	2006	2005
Arrest to Indictment	24	25	27
Indictment to Trial	156	230	284
Conviction to Sentencing	100	158	164

Table 2. Case Disposal Method

•	2007	2006	2005
Guilty/Nolo Plea	395 / 86.6%	405 / 91.8%	299 / 86.2%
Trial	31 / 6.8%	17 / 3.9%	22 / 6.3%
Convicted by Jury Convicted by Court Acquitted by Jury Acquitted by Court Not Guilty(Insanity) by Jury	20/4.4% 3/.7% 7/1.5% 1/.2% -0-	13/2.9% -0- 1/.2% 2/.45% 1/.2%	21/6% -0- 1/.3% -0- -0-
Dismissed Without Prejudice	18 / 3.9%	3 / .7%	8 / 2.3%
Dismissed by Government	7 / 1.5%	14 / 3.2%	10 / 2.9%
Rule 20 Transfer	5 / 1.1%	2 / .45	8 / 2.3%
TOTAL CONVICTED	423 / 92.8%	420 / 95.2%	328 / 94.5%
TOTAL NOT CONVICTED	33 / 7.2%	21 / 4.8%	19 / 5.5%
GRAND TOTAL	456 / 100%	441 / 100%	347 / 100%

Table 3. Civil Cases

	2007	2006	2005
Filed per Year	796 (-4% from '06)	829 (-15% from '05)	972
Pending at Close of Year	714 (-11% from '06)	803 (-9% from '05)	884

NOTE: Tables 1 - 3 are based on twelve month periods ending July 31.

**Table 4. Pretrial Custody/Release Rates** 

	2007**	2006	2005
Detained	237 / 65%	312 / 70%	293 / 63%
Released	127 / 35%	134 / 30%	175 / 37%

**Table 5. Prosecutorial Information\*** 

	2007**	2006	2005
Opened for Prosecution or Investigation	404	564	465
	(475 individuals)	(747 individuals)	(658 individuals)
Charges Filed	279	369	295
	(370 defendants)	(465 defendants)	(386 defendants)
<b>Declined for Prosecution</b>	82	170	177
	(83 individuals)	(201 individuals)	(220 individuals)

<sup>\*</sup> These numbers are of limited use for the following reasons: (1) Some cases are opened during one calendar year for investigation, but the decision to prosecute or decline isn't made until a later calendar year. (2) Often it is more accurate to say a matter has been referred to the U.S. Attorney's Office (USAO) for investigation, rather than for "prosecution." These cases may be "declined" for a variety of reasons, to include lack of evidence or a decision that the matter is better suited for resolution in another forum (such as state court or a non-criminal disposition). However, the USAO's case management system does not allow for this distinction. (3) In many cases where prosecution is "declined" in favor of state prosecution, the USAO does not make a separate record of each such "declination." For example, oral declinations are routinely given for small mail theft and counterfeiting cases, which are then presented to the local county attorney for prosecution. Similarly, the USAO will often engage in informal discussions with agencies regarding whether a matter is more appropriately referred to the USAO or the local county attorney. These decisions are not reflected in the declination rates noted above. (4) The table above does not include the relatively small number of cases that are resolved through the Pretrial Diversion program.

<sup>\*\*</sup> Tables 4 - 5 are based on calendar year, so 2007 figures are current through approximately August 30, 2007, shortly before submission of this report.